

PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE

The Rules of Appellate Procedure Committee is considering whether to recommend proposed amendments to the Rules of Appellate Procedure for the Supreme Court's consideration. If you would like to comment on the proposed amendments set forth below before they are submitted to the Court for final consideration, please send your written comments to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
P.O Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received by the Clerk on or before _____, 2007, to be considered by the Court.

12-213. Briefs.

A. **Brief in chief.** The brief in chief of the appellant, under appropriate headings and in the order herein indicated, shall contain:

(1) a table of contents, which shall ~~contain a listing of each legal issue raised in the appeal~~ list each section heading and the page [at] on which [the argument on the issue] that section begins. The appellant may raise issues in addition to those raised in the docketing statement or statement of the issues unless the appellee would be prejudiced.

(a) When the transcript of proceedings is an audio recording, ~~at the end of~~ following the listing of section headings, ~~[counsel]~~ the table of contents shall include either a statement of the name of the manufacturer and model of the ~~[recording]~~ device used [by counsel] in citing references to the transcript, together with a statement of how many counters or units are on one side of a tape when that tape is played on ~~[counsel's machine]~~ the device (e.g., [counsel used a] Sony BM-25 with 730 counters per tape side), or a statement that [counsel is using] the transcript citations conform to the official log ~~[in citing references to the transcript].~~

(b) When the transcript of proceedings is a digital or other electronic recording, ~~at the end of~~ following the listing of section headings, the table of contents ~~[, counsel]~~ shall include a statement ~~[to that effect and shall further state]~~ that references to the recorded transcript are by elapsed time from the start of the recording (e.g., "Tr. 10:25" indicates a point occurring ten minutes and twenty-five seconds after the start of the recording) ~~[or that counsel is using the official log in citing references to the transcript];~~

(c) If the brief exceeds the page limitations contained in subparagraph (2) of Paragraph F of this rule, following any statement regarding the method of citing the transcript, the table of contents shall include a statement of compliance as required by Paragraph G of this rule.

(2) a table of authorities, arranged in separate headings for each type of authority cited, listing cases alphabetically (New Mexico decisions separately from decisions from other

jurisdictions), statutes and other authorities, ~~[cited]~~ with page references~~[-to the pages of the brief where they are cited];~~

(3) a summary of proceedings, ~~[which shall indicate]~~ briefly describing the nature of the case, the course of proceedings~~[-]~~ and the disposition in the court below, and ~~[shall]~~ includ[ing] a summary of the facts relevant to the issues presented for review. Such summary ~~[must be accompanied by references]~~ shall contain citations to the record proper, transcript of proceedings or exhibits ~~[showing a finding or proof of]~~ supporting each factual ~~[allegation contained therein]~~ representation. A contention that a verdict, judgment or finding of fact is not supported by substantial evidence shall be deemed waived unless the summary of proceedings includes the substance of the evidence bearing upon the proposition;

(4) an argument which, with respect to each issue presented, shall contain a statement of the applicable standard of review, the contentions of the appellant and a statement explaining how the issue was preserved in the court below, with citations to authorities, ~~[and parts of the]~~ record proper, transcript of proceedings or exhibits relied on. Applicable New Mexico decisions~~[-, if any,]~~ shall be cited. The argument ~~[must]~~ shall set forth a specific attack on any finding, or such finding shall be deemed conclusive. A contention that a verdict, judgment or finding of fact is not supported by substantial evidence shall be deemed waived unless the argument ~~[has]~~ identifie[d]s with particularity the fact or facts ~~[which]~~ that are not supported by substantial evidence; and

(5) a conclusion containing a precise statement of the relief sought.

B. **Answer brief.** The answer brief of the appellee shall conform to the requirements of the brief in chief, except that a summary of proceedings shall not be included unless deemed necessary.

C. **Reply brief.** The appellant may file a brief in reply to the answer brief. Such brief shall conform to the requirements of Subparagraphs (1), (2) and (4) of Paragraph A, and shall ~~[be directed]~~ reply only to ~~[new]~~ arguments or authorities presented in the answer brief.

D. **Supplemental briefs and authorities.**

(1) Except for those briefs specified in this rule, no briefs may be filed without prior approval of the appellate court.

(2) When pertinent and significant authorities come to the attention of counsel after counsel's brief has been filed, or after oral argument but before decision, counsel shall promptly advise the appellate court clerk, by letter and without argument, with a copy to all counsel, setting forth the citations and attaching a copy thereto, if available. ~~[There]~~ The letter shall ~~[be a]~~ refer~~[ence]~~ either to the page of the brief or to a point argued orally to which the citations pertain.

E. **Citations.** All ~~[New Mexico cases]~~ authorities shall be cited ~~[from the official reports, with parallel citations if available. As to other authorities, any consistent method or form which adequately identifies the authority may be used]~~ in accordance with Rule 23-112 NMRA.

F. **Length, preparation and service of briefs.** The requirements of Rule 12-305 NMRA apply to briefs.

(1) **Body of the brief defined.** The body of the brief in chief, answer brief, amicus brief, or reply brief consists of headings, footnotes, quotations and all other text except the cover page, caption, table of contents, table of authorities, signature blocks and certificate of service.

(2) **Page limitation.** Except by permission of the court, or unless it complies with Subparagraph (3) of Paragraph F of this rule, the [portion] body of a brief in chief, [and] answer brief or amicus brief [consisting of the summary of proceedings and the argument] shall not exceed thirty-five (35) [double-spaced typewritten] pages. Except by permission of the court, or unless it complies with Subparagraph (3) of Paragraph F of this rule, the [argument portion] body of the reply brief shall not exceed fifteen (15) [double-spaced typewritten] pages.

(3) **Type-volume limitation.** Except by permission of the court, the body of a brief in chief, answer brief, or amicus brief shall not exceed eleven thousand (11,000) words, if the party uses a proportionally-spaced type style or typeface, or one thousand two hundred (1,200) lines, if the party uses a monospaced type style or typeface. The body of a reply brief shall not exceed four thousand four hundred (4,400) words, if the party uses a proportionally-spaced type style or typeface, or four hundred eighty (480) lines, if the party uses a monospaced type style or typeface.

(4) **Attachments prohibited.** No documents shall be attached to briefs.

(5) **Service.** Briefs shall [comply with Rule 12-305 NMRA and] be served in accordance with Rule 12-307 NMRA, Rule 12-307.1 NMRA or Rule 12-307.2 NMRA

G. **Statement of compliance.** Pursuant to Sub-subparagraph (c) of Subparagraph (1) of Paragraph A of this rule, if a brief exceeds the page limitations of Subparagraph (2) of Paragraph F of this rule, then the brief shall contain a statement that it complies with the limitations of Paragraph F of this rule. If the brief is prepared using a proportionally-spaced type style or typeface, the statement shall specify the number of words contained in the body of the brief. If the brief is prepared using a monospaced type style or typeface, the statement shall specify the number of lines contained in the body of the brief. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

H. **Time of filing.** Unless otherwise ordered by the appellate court or as these rules prescribe, Rule 12-210 NMRA governs the time and order of filing briefs.

[H]I. **Cross-appeals.** In cross-appeals, the brief in chief, the answer brief and the reply brief shall comply with this rule. The party who first files a notice of appeal or, if both parties file on the same day, the plaintiff in the proceedings below, shall be the appellant. The appellant's brief in chief shall be filed as provided in Rule 12-210 NMRA. The appellee's answer brief and brief in chief on [any] cross-appeal shall be filed simultaneously as separate documents and shall be filed within forty-five (45) days after service of the brief in chief of the appellant in cases assigned to [a] the general calendar and within twenty (20) days after such service in cases assigned to [a] the legal calendar. The appellant's reply brief and [the appellant's] answer brief to the brief in chief on [any] cross-appeal shall be filed simultaneously as separate documents within forty-five (45) days after service of the answer brief and [the] brief in chief on cross-appeal[s] in cases assigned to [a] the general calendar and within twenty (20) days after such service in cases assigned to [a] the legal calendar.[—]A cross-appellant may file a reply brief within twenty (20) days after service of the answer brief responding to cross-appellant's brief in chief.

12-305. Form of papers [~~transcripts of proceedings and records proper~~] prepared by parties.

A. ~~[Transcripts of proceedings and records proper. Copies of stenographic transcripts of proceedings shall be reproduced from the original transcript by any duplicating or copying process which produces a clear black image on white paper or shall be typed or printed on white paper. The format of transcripts of proceedings shall comply with the provisions of Paragraphs B and C of this rule except that transcripts and records proper shall be bound.~~

~~——— B. ——— Other papers. Briefs, motions, applications, petitions and all other papers, except exhibits, filed in the appellate court, shall be: clearly legible; typewritten or printed on good quality white paper eight and one-half by eleven (8 1/2 x 11) inches in size, with left, right, top and bottom margins of one (1) inch; with consecutive page numbers at the bottom; and stapled at the upper left hand corner; and, except for a cover page, shall be typed or printed using pica (10 pitch) type style or a twelve (12) point typeface. The contents, except quotations, shall be double spaced. **Scope.** This rule applies to briefs, motions, applications, petitions and all other papers, except exhibits, prepared by parties or their counsel and filed in the appellate court.~~

B. General requirements. All papers shall be:

- (1) clearly legible;
- (2) typewritten or printed on good quality white paper, eight and one-half by eleven (8 1/2 x 11) inches in size, with left, right, top and bottom margins of one (1) inch;
- (3) paginated with consecutive page numbers at the bottom;
- (4) stapled at the upper left-hand corner; and
- (5) signed in accordance with Paragraph A of Rule 12-302, with the signature block containing the name and address of counsel filing the paper, or, if the party is not represented by counsel, the name and address of the party filing the paper.

C. Minimum size for type style or typeface. Except for handwritten documents, all papers shall be typed or printed using either a proportionally-spaced or monospaced type style or typeface.

(1) A proportionally-spaced type style or typeface must include serifs and must be fourteen (14) point or larger. A proportionally-spaced type style or typeface varies the horizontal spacing of each character based on its relative shape.

(2) A monospaced type style or typeface may not contain more than ten (10) characters per inch. A monospaced type style or typeface allots the same amount of horizontal space for each character, whatever the relative shape of the characters.

D. Spacing. All papers shall be double-spaced, except that information required by Paragraph E of this rule, cover page, table of contents, table of authorities, headings, subheadings, footnotes, quotations, signature blocks and addresses contained in a certificate of service may be single-spaced.

E. Caption. The front page of all papers shall show:

(1) the name of the appellate court;

(2) the parties to the appeal and their status below and on appeal, with the plaintiff or petitioner in the trial court listed first (e.g., John Doe, Plaintiff-Appellee v. Richard Roe, Defendant-Appellant);

(3) the docket number in the appellate court if one has been assigned; and

(4) the title of the paper being filed.

[C.]E. **Cover page.** The front cover of a ~~[record proper, transcript of proceedings,]~~ docketing statement, statement of the issues ~~[and]~~or brief shall also show:

(1) ~~[the name of the appellate court;~~

~~_____ (2) _____ the parties to the appeal and their status in the trial court and on appeal, with the plaintiff or petitioner in the trial court listed first (e.g. John Doe, Plaintiff-Appellee v. Richard Roe, Defendant-Appellant);~~

~~_____ (3) _____]~~the county or administrative body in which the case was filed or tried, except for briefs filed in the Supreme Court pursuant to Rule 12-502 NMRA;

~~[(4)]~~2) the name of the trial judge or administrative officer, except for briefs filed in the Supreme Court pursuant to Rule 12-502 NMRA;

~~[_____ (5) _____ the title of the paper or item being filed;]~~ and

~~[(6)]~~3) the name and mailing address of ~~[trial]~~ counsel filing the document, or, if [submitting a record proper or transcript, or the counsel filing the docketing statement, statement of the issues or brief. If] a party is not represented by counsel, the name and address of the party ~~[shall appear on the document].~~

[D.]G. **Captions ~~[for papers involving children]~~in appeals under the Children's Code.** In appeals concerning children involved in litigation under the provisions of Children's Code, the captioning ~~[of papers filed with the appellate court]~~ shall conform to the following practice:

(1) in criminal appeals involving a child adjudicated as a delinquent offender under Article 2 of the Children's Code, the caption should identify the child by the child's first name and the first initial of the child's last name, and the status of the child on appeal should be listed as "Child-Appellant" or "Child-Appellee", as the case may be;

(2) in criminal appeals involving a child adjudicated as a serious youthful offender or youthful offender and sentenced as an adult under Article 2 of the Children's Code, the caption should identify the child by the child's full first and last name, and the status of the child on appeal should be listed as "Defendant-Appellant" or "Defendant-Appellee", as the case may be;

(3) in civil appeals involving a child who is the subject of an abuse and neglect proceeding or a termination of parental rights proceeding under Article 4 of the Children's Code, the caption should identify the child~~;~~ and the child's parents~~;~~ by their first names and the first initial of their last names, and any guardian ad litem;

(4) in all other appeals involving a child under the provisions of the Children's Code, the caption should identify the child, and the child's parents when necessary, by their first names and the first initial of their last names, and any guardian ad litem.

[NEW RULE]

12-305.1. Form of transcripts of proceedings and records proper.

A. **Preparation of transcripts of proceedings and records proper.** Copies of stenographic transcripts of proceedings shall be reproduced from the original transcript by any duplicating or copying process that produces a clear black image on white paper or shall be typed or printed on white paper. The format of transcripts of proceedings shall comply with the provisions of Paragraphs B and C of this rule. Transcripts and records proper shall be bound.

B. **Cover page.** The front cover shall show:

- (1) the name of the appellate court;
- (2) the parties to the appeal and their status below and on appeal, with the plaintiff or petitioner in the trial court or administrative body listed first (*e.g.*, John Doe, Plaintiff-Appellee v. Richard Roe, Defendant-Appellant);
- (3) the county or administrative body in which the case was filed or tried;
- (4) the name of the trial judge or administrative officer;
- (5) the title of the paper being filed; and
- (6) the name and mailing address of all counsel or, if a party is not represented by counsel, the name and mailing address of the party.

C. **Caption in appeals under the Children's Code.** In appeals concerning children involved in litigation under the provisions of Children's Code, the captioning shall conform to the following practice:

- (1) in criminal appeals involving a child adjudicated as a delinquent offender under Article 2 of the Children's Code, the caption should identify the child by the child's first name and the first initial of the child's last name, and the status of the child on appeal should be listed as "Child-Appellant" or "Child-Appellee", as the case may be;
- (2) in criminal appeals involving a child adjudicated as a serious youthful offender or youthful offender and sentenced as an adult under Article 2 of the Children's Code, the caption should identify the child by the child's full first and last name, and the status of the child on appeal should be listed as "Defendant-Appellant" or "Defendant-Appellee", as the case may be;
- (3) in civil appeals involving a child who is the subject of an abuse and neglect proceeding or a termination of parental rights proceeding under Article 4 of the Children's Code, the caption should identify the child and the child's parents by their first names and the first initial of their last names, and any guardian ad litem;

(4) in all other appeals involving a child under the provisions of the Children's Code, the caption should identify the child, and the child's parents when necessary, by their first names and the first initial of their last names, and any guardian ad litem.

12-306. Number of copies of papers.

A. **Scope of rule.** This rule governs the number of copies of briefs, motions and other papers to be filed in the appellate court unless otherwise provided by these rules or by the appellate court.

B. **Copy; definition.** As used in this rule, "copy" includes the original.

C. **Papers filed in the Supreme Court.** The following numbers of copies of papers shall be filed in the Supreme Court:

(1) notices of appeal in cases in which the notice of appeal is originally filed in the Supreme Court: o n e (1) ;

(2) statement of the issues: t h r e e (3) ;

(3) motions for extension of time or page limits and responses thereto: o n e (1) ;

(4) briefs in chief, answer briefs and reply briefs: s e v e n (7) ;

(5) motions to amend papers and responses thereto: o n e (1) ;

(6) motions for rehearing and briefs in support thereof and responses thereto: s i x (6) ;

(7) petitions for writs of certiorari and responses thereto: seven (7) ;

(8) all other motions, responses and briefs in support thereof or opposition thereto: f o u r (4) ;

([8]9) all other papers: s e v e n (7) .

D. **Papers filed in the Court of Appeals.** One (1) copy of all motions, briefs and other papers shall be filed in the Court of Appeals, except for briefs in chief, answer briefs and reply briefs, when six (6) copies shall be filed.

12-502. Certiorari to the Court of Appeals.

A. **Scope of rule.** This rule governs petitions for the issuance of writs of certiorari seeking review of decisions of the Court of Appeals and of actions of the Court of Appeals pursuant to Rule 12-505 NMRA of these rules.

B. **Time.** The petition for writ of certiorari shall be filed with the Supreme Court clerk within twenty (20) days after final action by the Court of Appeals and served immediately on respondent. The petition shall be accompanied by the docket fee or a free process order. The three (3) day mailing period set forth in Rule 12-308 NMRA does not apply to the time limits set by this paragraph. Final action by the Court of Appeals shall be the filing of its decision with the Court of Appeals clerk unless timely motion for rehearing is filed, in which event, final action shall be the disposition of the last motion for rehearing ~~[which]~~that was timely filed.

C. **Petition; contents.** The petition~~[, not exceeding ten pages in length,]~~ shall have attached~~[:]~~ a copy of the decision of the Court of Appeals~~[:]~~ and, if decided on the summary calendar, a copy of any calendaring notices. ~~[In any case in which]~~If a motion for rehearing was filed, the motion and the order of the Court of Appeals on the motion shall be attached. The cover of the petition shall show the names of the parties, with the plaintiff or petitioner in the trial court or administrative body listed first (*e.g.*, State of New Mexico, Plaintiff-Respondent vs. John Doe, Defendant-Petitioner). The petition shall contain a concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked, showing:

(1) the date of entry of the decision and any order on motion for rehearing thereon;

(2) the questions presented for review~~[:]~~ (the Court will consider only the questions set forth in the petition[~~will be considered by the Court~~]);

(3) the facts material to the questions presented;

(4) the basis for the granting of the writ specifying where applicable:

(a) any decision of the Supreme Court with which it is asserted the decision of the Court of Appeals is in conflict, and showing of such conflict, including a quotation from that part of the Court of Appeals opinion, if any, and a quotation from the part of the Supreme Court opinion showing the alleged conflict;

(b) any decision of the Court of Appeals with which it is asserted the decision from which certiorari is sought is in conflict, and showing of such conflict, including a quotation from that part of ~~[this]~~the Court of Appeals opinion, if any, and a quotation from that part of the prior Court of Appeals opinion showing the alleged conflict;

(c) what significant question of law under the Constitution of New Mexico or the United States is involved; or

(d) the issue of substantial public interest that should be determined by the Supreme Court;

(5) a direct and concise argument amplifying the reasons relied upon for allowing of the writ, including specific references to the briefs filed in the Court of Appeals showing where the questions were presented to the Court of Appeals; and

(6) a prayer for relief, including whether the case should be remanded to the Court of Appeals for consideration of issues not raised in the petition if the relief requested is granted.

D. **Length limitations.** Except by permission of the Court, the petition shall comply with Rule 12-305 NMRA and the following length limitations:

(1) **Body of the petition defined.** The body of the petition consists of headings, footnotes, quotations and all other text except the cover page, table of contents, table of authorities, signature blocks and certificate of service.

(2) **Page limitation.** Unless the petition complies with Subparagraph (3) of Paragraph D of this rule, the body of the petition shall not exceed ten (10) pages; or

(3) **Type-volume limitation.** The body of the petition shall not exceed three thousand one hundred fifty (3,150) words, if the party uses a proportionally-spaced type style or typeface, or three hundred forty-two (342) lines, if the party uses a monospaced type style or typeface.

E. **Statement of compliance.** If the body of the petition exceeds the page limitations of subparagraph (2) of Paragraph D of this rule, then the petition must contain a statement that it complies with the limitations of Subparagraph (3) of Paragraph D of this rule. If the petition is prepared using a proportionally-spaced type style or typeface, the statement shall specify the number of words contained in the body of the petition as defined in Subparagraph (1) of Paragraph D of this rule. If the petition is prepared using a monospaced type style or typeface, the statement shall specify the number of lines contained in the body of the petition. If the word-count or line-count information is obtained from a word-processing program, the statement shall identify the program and version used.

[D]F. **Conditional cross-petition.** Any party may, within fifteen (15) days of service of a petition for writ of certiorari, file a conditional cross-petition for writ of certiorari, to be considered only if the Court grants the petition. A conditional cross-petition shall be clearly identified as conditional on the cover. Material attached to the petition need not be attached again to a conditional cross-petition. A conditional cross-petition shall be governed by all other provisions of this rule, except as provided in this paragraph.

[E]G. **Response.** A respondent may file a response to the petition within fifteen (15) days of service of the petition or within fifteen (15) days of the granting of the petition. The response shall ~~[not exceed ten pages in length]~~ comply with Paragraphs D and E of this rule. No other response may be submitted~~[other than a motion directed to a jurisdictional defect in the petition].~~

[F]H. **Notice to Court of Appeals.** A copy of the petition for a writ of certiorari shall be delivered by the Supreme Court clerk to the Court of Appeals clerk who shall deliver the record of the cause to the Supreme Court on request, and recall any previously issued mandate.

[G]I. **Briefs.** In the event the writ of certiorari is issued, additional briefs may be filed only as directed by the Supreme Court.

[H]J. **Oral argument.** Oral argument shall not be allowed unless directed by the Supreme Court.

[F]K. **Service.** Service of any paper shall be made and proof thereof accomplished in accordance with Rule 12-307 NMRA.

[F]L. **Copies.** If the petition for writ of certiorari has been filed pro se by a petitioner adjudged indigent, only the original petition shall be filed. In all other cases, copies shall be filed in accordance with Rule 12-306 NMRA.